

(a) Mixing Zone Policy

In conjunction with the issuance of CWA section 402 and 404 permits, the ~~Tribal SBT~~ authorizes may authorize the use of mixing zones in ~~the reservation waters designated in paragraph (a) of this section~~ Tribal Surface Waters on a case-by-case basis, in accordance with the following provisions.

(1) Mixing zones, including their size, configuration, and location, shall be authorized by the ~~Tribal Water Resources Department~~ insert name of the Tribe's office that will authorize the mixing zones on a case-by-case basis in accordance with the provisions of this section at the time a permit is issued, renewed, or materially modified and is in effect as long as the permit remains in effect. Such an authorization is required before the permitting authority can use the mixing zone to determine the need for, or level of, effluent limits for a particular pollutant.

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(2) Mixing zones shall not be authorized for a pollutant when the receiving water does not meet water quality criteria for that pollutant, except where (a) the effluent limits established using a mixing zone are consistent with an EPA-approved or EPA-established TMDL, and (b) the mixing zone is in accordance with this section.

(3) Mixing zones shall not be authorized where they may cause unreasonable interference with, or danger to designated uses, including, but not limited to, any of the following:

(i) Impairment to the integrity of the aquatic community, including interference with successful spawning, egg incubation, rearing, or passage of aquatic life.

~~(ii) Discharges into shellfish beds.~~

~~(iii)~~ (ii) Lethality to aquatic life passing through the mixing zone.

~~(iv)~~ (iii) Heat in the discharge that may cause thermal shock, lethality, or loss of cold water habitat or may attract aquatic life to a toxic discharge.

~~(v)~~ (iv) Bioaccumulative pollutants in the discharge.

~~(vi)~~ (v) Pollutant concentrations that exceed maximum contaminant levels at drinking water intakes.

~~(vii)~~ (vi) Conditions that impede or prohibit recreation in or on the waterbody. Mixing zones shall not be authorized for the ~~indicators~~ indicator bacteria and cyanotoxins identified in Table 6 Section 5.2(b)).

(4) Mixing zones shall not overlap.

(5) Water quality within an authorized mixing zone is allowed to exceed chronic water quality criteria for those parameters approved by the ~~Tribal Water Resources Department~~ insert name of the Tribe's office that will authorize the mixing zones. Acute

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water quality criteria may be exceeded for such parameters within the zone of initial dilution inside the mixing zone. Acute criteria shall be met as near to the point of discharge as practicably attainable. Narrative criteria in paragraph (c) of this section apply within the mixing zone. Water quality criteria shall not be exceeded outside of the boundary of a mixing zone as a result of the discharge for which the mixing zone was authorized.

(6) Mixing zones shall be no larger than necessary, and the concentrations of pollutants present shall be minimized. Mixing zones shall meet the following restrictions:

(i) Mixing zones shall be designed to avoid or minimize adverse effects to species and critical habitat listed under the Endangered Species Act.

~~(ii)~~ (ii) Mixing zones in flowing waters shall not:

- (1) Extend in a downstream direction for a distance from the discharge port(s) greater than 300 feet plus the depth of water over the discharge port(s);
- (2) Extend upstream for a distance of over 100 feet;
- (3) Utilize greater than 25% of the critical low flow; nor
- (4) Occupy greater than 25% of the width of the waterbody.

~~(iii)~~ (iii) Mixing zones in nonflowing waters shall not:

- (1) Exceed 10% of the volume of the waterbody;
- (2) Exceed 10% of the surface area of the waterbody (maximum radial extent of the plume regardless of whether it reaches the surface); nor
- (3) Extend beyond 15% of the width of the waterbody.

(iv) Mixing zones that result in shore-hugging plumes shall not be authorized.

(7) The following elements shall be ~~considered incorporated~~ when designing an outfall:

(i) Promote rapid mixing to the extent practicable through careful location and outfall design;

(ii) Diffusers shall be used ~~and~~

~~(iii)(i) Mixing zones that result in shore-hugging plumes shall not be authorized.~~

Commented [ME3]: These requirements don't meet the definition of "what is a WQS" and the EPA would not take an action. However, they can be included in the WQS for extra protections.